

OPENING

Law Enforcement Newsletter

SPECIAL EDITION

LINES



A Publication of the Maricopa County Attorney's Office

Volume 4, Number 2

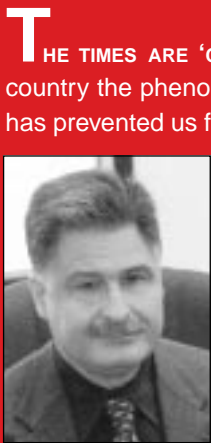
JUNE 2000



Richard M. Romley
Maricopa County Attorney

Superior Court — Discovery Procedure: The Only Constant Is Change — and It Affects You **BIG** Time

By Jerry G. Landau, *Special Assistant County Attorney*



Jerry Landau

THE TIMES ARE 'CHANGIN'! Although crime rates are down across the country the phenomenal growth in Maricopa County and the metro area has prevented us from seeing any major relief in workloads. In fiscal year 1998-1999, the Maricopa County Attorney's Office filed 25,574 felony cases in adult court and 9,883 petitions into the juvenile system. Gone are the days when every officer knew every deputy county attorney by sight and receptionists knew each case by the defendant's name and assigned detective. Now you need a calculator to figure out badge numbers!

Today, Maricopa County is home to the sixth largest city in the country and one of the ten largest metro-plexes in the United States. From new techniques in ballistics and blood spatter evidence to new science involving DNA analysis, police work has become more complex. These changes affect how all of us do business. They have also made the Superior Court stand up and take notice. The result — change, change, change in how Pre-trial discovery takes place. From methodology to practicality, we are all affected. And it begins — Now!

This special edition of *OPENING LINES* is devoted to a discussion of the issues surrounding Discovery — the right of both parties to obtain discovery under Arizona's Rules of Criminal Procedure, the time limits involved and procedures that are being put into place.

In past editions you have seen articles on the importance of timely and complete reports, returning phone calls from prosecutors and

See Discovery Procedure, page 6

Rules of Criminal Procedure — Law Rooted In the Constitution of the United States

A QUICK REFRESHER might help put the Arizona Rules of Criminal Procedure in perspective. The Rules have evolved over time and were codified in their current version in 1974 and are "the law" in Arizona governing criminal proceedings from the time of arrest through the appeal process.

The Rules of Criminal Procedure developed over time and are intended to regularize court and litigation procedures while giving life to rights enshrined in the U.S. Constitution:

"[No person shall]...be deprived of life, liberty or property without due process of law....";

Rule 1.2 sums up the purpose of the Arizona Rules of Criminal Procedure:

These rules are intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and

See Rules, page 6

The Courts Signal a Policy Change: Fewer Continuances

EVERY OFFICER HAS EXPERIENCED the frustration of changing plans for a day off to appear in court, or actually showing up at court only to have the court proceeding continued until another day. Imagine how much more frustrating this is to the victim or non-police witnesses. On the other hand we have all received the personal or professional benefit from being able to reschedule a court date.

Speedy Trial and Time Limits: The Rules

The time limits and disclosure of evidence provisions in the Rules of Criminal Procedure give concrete protections to citizens. Thus a person must be brought before a magistrate within 24 hours after arrest or be “immediately” released. After a probable cause determination at a preliminary hearing or by a grand jury, the defendant must be arraigned.

Under the provisions of Rule 8, every defendant “shall” be tried within 150 days of arrest or service of summons. Persons held in custody must be tried within 120 days of the initial appearance OR within 90 days of the arraignment, whichever time period is shorter. The rules provide exceptions for delays by, or on behalf of, the defendant or in the interests of justice. These are called “continuances.” There are continuances in most cases.

The Courts are Less Inclined to Grant Continuances

The Courts have put the criminal trial bar on notice: Continuances will be harder to come by. The Court Administrator has concluded that, in

its opinion, over 90% of the cases in Superior Court are at least 290 days old, a condition that the court finds unacceptable. In a Draft Administrative Order for the Maricopa Superior Court the following changes are proposed.

Commencing July 17, 2000, motions to continue trials in criminal cases pending in the downtown court complex in Maricopa County shall be heard by a panel of three judges to be designated by the presiding judge. The regularly assigned trial judges may hear only motions to continue that request a trial continuance of five business days or less, and no more than one in a particular case.

The draft order includes a number of additional pleadings and administrative forms to be filled out to help ensure compliance. In other words, specially selected judges will hear motions to continue. Reading between the lines tells us most motions to continue, absent a first continuance, will be denied. You must be ready to go to trial on the trial date.

What does this mean? Besides not expecting a continuance, it means that once you get notice of a trial date you must prepare. Review the police report, discuss the case with the prosecutor, know where the evidence is located and ensure laboratory analysis is completed. The odds are, if the case is not resolved by plea agreement, you are going to trial. This is part of the new culture we are talking about. ⚖

Prosecutors and Police, A Combined Response

By Jerry G. Landau, Special Assistant County Attorney and Mark C. Faull, Deputy County Attorney

What Can You Do?

- Keep a positive attitude. Quicker and more timely resolution of cases is in the interest of justice. Criminals are held accountable faster, which has a greater deterrent effect. Victims have a quicker opportunity for closure and healing. We know from experience that long delays usually work to the benefit of the criminal defendant.
- Complete your reports in a timely fashion.
- Log all your evidence and document evidence that you know exists but is not under your control. (911 tapes in a DV case.)
- Make any crime lab submissions/requests for analysis in a timely fashion.
- Include all evidence in your DR. Inform the prosecutor of all evidence. In a recent case an officer produced his "personal" tape of the defendant's confession the day before trial and more than a half a year after the arrest. This is unacceptable.
- Agencies must have officers certified to perform field tests for drugs. Our office issues charges in simple possession cases based on positive results in a field test. The result: quicker dispositions and reduction of lab backlogs.
- Return phone calls immediately and keep playing phone tag until you make contact. Keep a log of dates, times and names of the persons you contact, defense or prosecution and make a note of the information you receive. You may be explaining your actions to a judge.
- Keep the Deputy County Attorney in the loop when defense attorneys are contacting you.

In order to assist you the Maricopa County Attorney's Office is implementing the following procedures:

- Paralegals, secretaries and attorneys will create a paper trail to document all discovery efforts in the case file.

- Paralegals, secretaries and attorneys will document all efforts to contact police officers and non-police witnesses regarding discovery matters.
- Support staff will prioritize the mailing and delivery of discovery materials.
- The office will send a revised letter to all potential witnesses advising them of their rights and informing them of our desire to be present at any interview.
- Attorneys have been encouraged to aggressively assert the reciprocal rights of discovery under the rules.
- Our Deputy County Attorney will make every effort to be present or send a representative to the interviews.

"Recent actions by the Superior Court and the defense bar provide a sharp focus on the need for increased performance and professionalism from all who dedicate their lives to law enforcement."

Maricopa County Attorney Rick Romley is hosting a meeting with the administrators and directors of area forensics laboratories to determine the best way for the County Attorney's Office to support the labs in their quest for the additional resources necessary to eliminate a growing backlog of requests for analysis.

From computers to 4-wheel drive trucks, modern business has created new forms of partnerships to produce higher quality, "zero defect" products. Their successes hinge in large part on their ability to help each other improve the quality of each other's parts and by coordinating their work processes. Recent actions by the Superior Court and the defense bar provide a sharp focus on the need for increased performance and professionalism from all of us who work in partnership to improve the quality of community life and who have dedicated our lives to law enforcement.

We are committed to working with you; we want to assist where we can. You also must live up to your responsibilities. If you have any ideas how we can improve our coordinated response to fulfill our obligations under the rules, please take the time to pass them on to Jerry Landau or Mark Faull at 602-506-5781. ⚖️

The Public Defender Signals a Change: Pre-Trial Discovery

At the same time the judges have notified us of their new rule regarding continuances, the Maricopa County Public Defender's Office has notified us of a change in their policy regarding pre-trial discovery. The following is an excerpt of a memo from Maricopa County Public Defender Dean Trebesch to his attorneys.

The most commonly cited reason for continuance of trial is that discovery and interviews are not complete. We have repeatedly argued that we have chronic problems in obtaining complete discovery from the prosecution and in arranging interviews of prosecution witnesses. But these arguments are largely dismissed by the court, because of the relatively few discovery motions filed by our attorneys.

We have made several attempts to encourage more discovery motions, and many of you have made an effort to file more motions. In fact there have been several recent successes as a result of your increased attention to these issues.

I have decided to establish the following two policies, commencing June 1, 2000:

1. Attorneys will not file motions to continue trials because of problems obtaining discovery from the prosecution or inability to interview state's witnesses. Attorneys will file timely motions to compel, motions for depositions, motions for sanctions and any other motions necessary to resolve discovery issues before trial dates. If problems still exist on the trial date, attorneys will move for

appropriate sanctions, not continuance.

2. Attorneys will arrange their own interviews with non-victim state's witnesses, and will file motions for depositions when the witnesses will not cooperate. Attorneys will no longer wait for the prosecution to set up the inter-

"The most commonly cited reason for continuance of trial is that discovery and interviews are not complete."

—Dean Trebesch
Maricopa County Public Defender

views. If the prosecution fails to provide the witnesses' addresses, attorneys will file motions to compel this information, which is required by Rule 15.

Under this policy, attorneys will arrange their own interviews with non-victim witnesses. If the witnesses will not cooperate, attorneys will file motions for depositions. If a witness requests that a prosecution representative be present during the defense interview, the attorney will make a good faith attempt to arrange the interview with the prosecutor. If the prosecutor is not able or willing to attend the interview within a reasonable time, the defense attorney will file a motion for deposition. The time given to the prosecutor should be short, given the prosecution's plea cutoff policies and the court's enforcement of Rule 8.

Officers and police employees can now expect to be contacted directly by Deputy Public Defenders requesting witness interviews. Do not delay in responding to the defense attorney

request. Failure to timely respond may result in a Motion for Deposition, followed by a court order directing you to appear at a certain place and time for a sworn deposition.

The informal interview conducted at the request of the defense attorney can be held at a time (8 a.m.- 6 p.m.) and location convenient to you. If the court grants the defense motion for a deposition because you failed to timely respond, the date and time will be set convenient to the defense attorney.

Please contact the assigned Deputy County Attorney as soon as you receive a call or letter from the defense attorney. We will assist you in setting up the time and location. Either the prosecutor or support staff will attend the interview if at all possible. In addition, the Deputy County Attorney can assist you in setting reasonable conditions for the timing and duration of the interview and can answer legal questions you may have about aspects of the case such as confidential informants or personal attacks on your credibility. The defense interview can also provide crucial information about the defense strategy or jog an officer's memory about an important event in the investigation that was not documented in the original report.

Remember that witnesses are entitled to tape their own interview or request a copy of the tape or transcript from either the prosecutor or the defense attorney. Again, another important change in the culture. You will have to adapt, quickly. If you do this, public defender policy will be seamless. If not, your schedule will not always be your own. ⚖️

The need for timely reports: Time Limits for Discovery and Pre-Trial Preparation

Pre-Trial Preparation

Discovery is the term used by attorneys to describe the process for learning about the evidence in the possession of the opposing party in a lawsuit. Needless to say the right of the state to “discover” the evidence from the defendant is limited by the defendant’s constitutional right against self-incrimination. However, the state must disclose all the evidence, favorable or unfavorable, to the defendant.



Mark Faull

A critical part of our ability to bring a case to trial or obtain a just plea agreement involves not just the gathering of evidence but the timely disclosure of that evidence to the defendant. While some jurisdictions limit the information that the parties in a criminal case must give to each other, Arizona has expressed a clear public policy preference for trials based on the merits of the facts and evidence, not on the gamesmanship of the parties.

In a letter to the chief executives of all the local law enforcement agencies, Maricopa County Attorney Rick Romley laid the stakes on the table. Failure to provide the departmental reports in a timely fashion may result in preclusion of evidence, witnesses, and in the most extreme instance, dismissal of the case. In other words, criminals will go free.

Detectives and experienced officers are all too familiar with the amount of preparation required to take a case to trial or to obtain a just plea bargain in a serious case. The rules governing the exchange of information, conduct of witness interviews and reports of the analysis of evidence are further complicated by the reality that some evidence is just not available within ten days of arraignment.

Another bottom line. All reports and supplements must be completed timely. The courts will no longer tolerate a supplement presented to the county attorney weeks after it could have been completed.

Many of you have heard that in the past 18 months the court imposed a personal fine of \$1500.00 on a

deputy county attorney for failing to obtain the appropriate discovery from an investigating agency. Just this month the court imposed a \$500.00 fine on a detective who failed to produce a copy of an audio tape in a timely manner.

If for some reason there is a gap in your investigation, do not wait until you finish interviewing *all* the witnesses and then write a supplement. Write the report, and when you have more to write, complete another supplement. Be sure to provide the prosecutor with the report immediately upon conclusion.

Motions for Continuance in a case are often predicated on some aspect of the trial preparation process such as disclosure of evidence, reports or the conduct of interviews. Rule 15 and its subsections govern the process of pre-trial disclosure of evidence in Arizona.

What Do the Rules Say?

Rule 15.1 (a), Matters Relating to Guilt, Innocence, or Punishment, states:

No later than 10 days after the arraignment in Superior Court, or in limited jurisdiction courts, no later than pre-trial conference or 20 days after arraignment, whichever is earlier, or at such time as the court may direct, the prosecutor shall make available to the defendant for examination and reproduction the following information and material and information except as provided by Rule 39(b) within the prosecutor’s possession or control:

(1) The names and addresses of all persons whom the prosecutor will call as witnesses in the case-in-chief together with all their relevant written or recorded statements;

(2) All statements of the defendant and of any person who will be tried with the defendant;

(3) The names and addresses of experts who have personally examined a defendant or any evidence in the particular case, together with the results of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case;

(4) A list of all papers, documents, photographs or tangible objects which the prosecutor will use at trial or

See Time Limits, page 6

Rules, from page 1

expense, and to protect the fundamental rights of the individual while preserving the public welfare.

Adherence to the criminal rules are no less a part of our job than respect for the 4th Amendment. Bottom line, we have a legal and ethical responsibility to comply with the Arizona Rules of Criminal Procedure. ⚖️

Submit information to:

Jerry Landau, Special Assistant
or
Mark Faull, Deputy County Attorney
Maricopa County Attorney's Office
301 W. Jefferson, Suite 800
Phoenix, AZ 85003-2151
Phone (602) 506-5781 or
Fax (602) 506-6149
www.maricopa.gov/attorney

Discovery Procedure, from page 1

effective evidence processing. The importance of these issues is being brought home to us by what you will be reading in this special edition. Pay heed. The ability to successfully prosecute a case is at stake.

These articles are designed to provide more insight into the interplay between your investigation, the Arizona Rules of Criminal Procedure and the pre-trial preparation that happens after a case is charged by our office. We will be discussing:

- **What Rules are we talking about and why should we be concerned? The Arizona Rules of Criminal Procedure.**
- **Exactly what do the Rules say and what happens if we do not comply? Court**

Continuances, Time Limits, The Process of Discovery.

- **What is the potential impact of these changes? Sanctions, Dismissals.**
- **How do we respond? County Attorney, Law Enforcement Agencies, Individual Officers.**

Ultimately, the goal of all these changes is to reduce the time it takes a case to proceed to trial. This can only benefit victims of crime and you, the officer on the street (or in the Detective Bureau). County Attorney Richard Romley and his staff are committed to working with you in implementing and adapting to these changes. Mark Faull and I especially look forward to this close cooperation in enhancing the Criminal Justice system. Read On!

Time Limits, from page 5

which were obtained from or purportedly belong to the defendant;

(5) A list of all prior felony convictions of the defendant which the prosecutor will use at trial;

(6) A list of all prior acts of the defendant which the prosecutor will use to prove motive, intent, or knowledge or otherwise use at trial;

(7) All material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce the defendant's punishment therefore, including all prior felony convictions of witnesses whom the prosecutor expects to call at trial.

Rule 15.1(d) and later court rulings make it clear that the court expects the prosecutor to obtain compliance from the police agencies: the court cases have held prosecutors responsible for police officers' actions and information even when the prosecutor was never told by police!

Extent of Prosecutor's Duty to Obtain Information. The prosecutor's obligation under this rule extends to material in the possession or control of mem-

bers of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

What happens to the victim's case when we do not comply with the rules? Rule 15.7 provides part of the answer:

Rule 15.7. Sanctions.

a. If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any provisions of this rule or any order issued pursuant thereto, the court may impose any sanction which it finds just under the circumstances, including but not limited to:

- (1) Ordering disclosure of the information not previously disclosed.
- (2) Granting a continuance.
- (3) Holding a witness, party, or counsel in contempt.
- (4) Precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; and
- (5) Declaring a mistrial when necessary to prevent a miscarriage of justice.

This is serious business! ⚖️